

United States
Court of Appeals
For the Ninth Circuit.

WING FOO,

Appellant,

vs.

HARD McGRATH, Attorney General of the
United States,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Northern District of California,
Southern Division.

FILED
AUG 27 1951



United States
Court of Appeals

For the Ninth Circuit.

WING FOO,

Appellant,

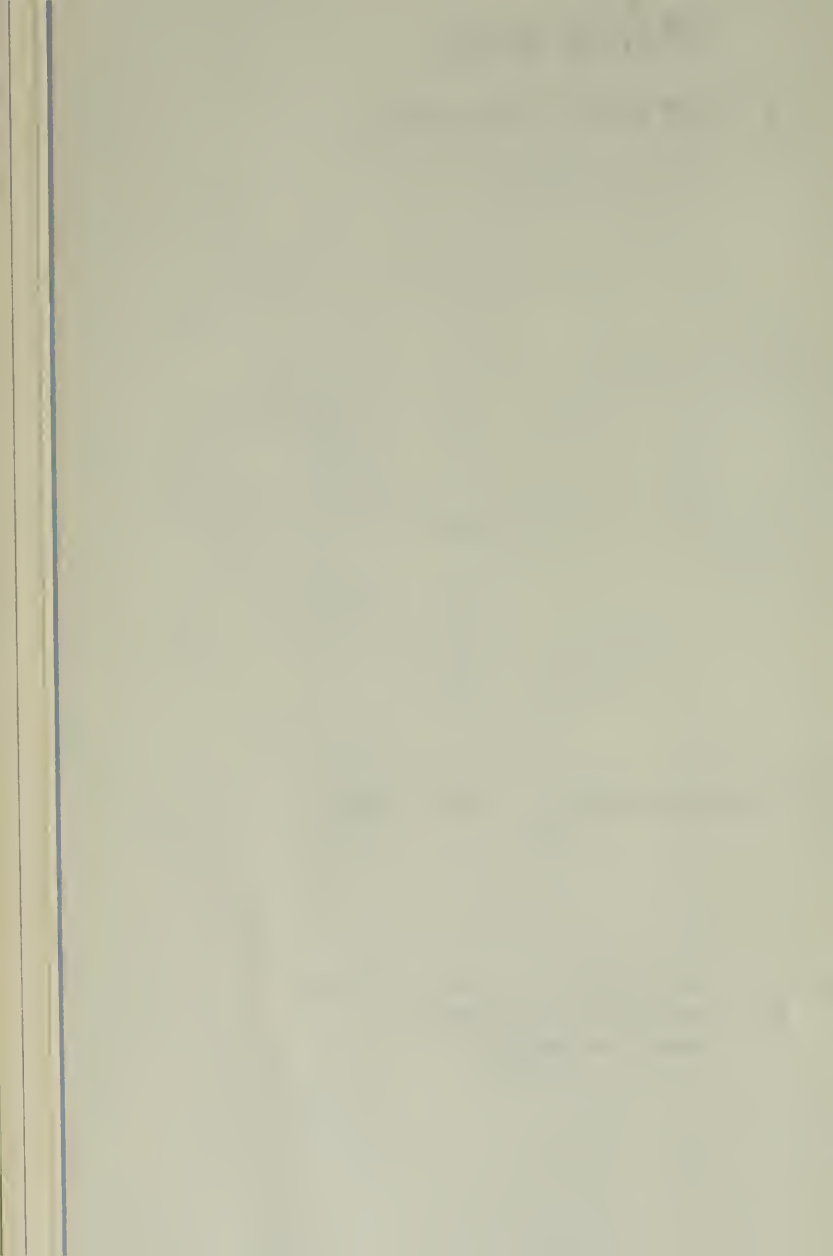
vs.

WARD McGRATH, Attorney General of the
United States,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Northern District of California,
Southern Division.



Note: When deemed likely to be of an important nature, doubtful matters appearing in the original certified record literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein. When possible, an omission from the text is indicated by *italics* the two words between which the omission seems

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Wong Wing Foo

—direct

—cross

Wong Yem

—direct

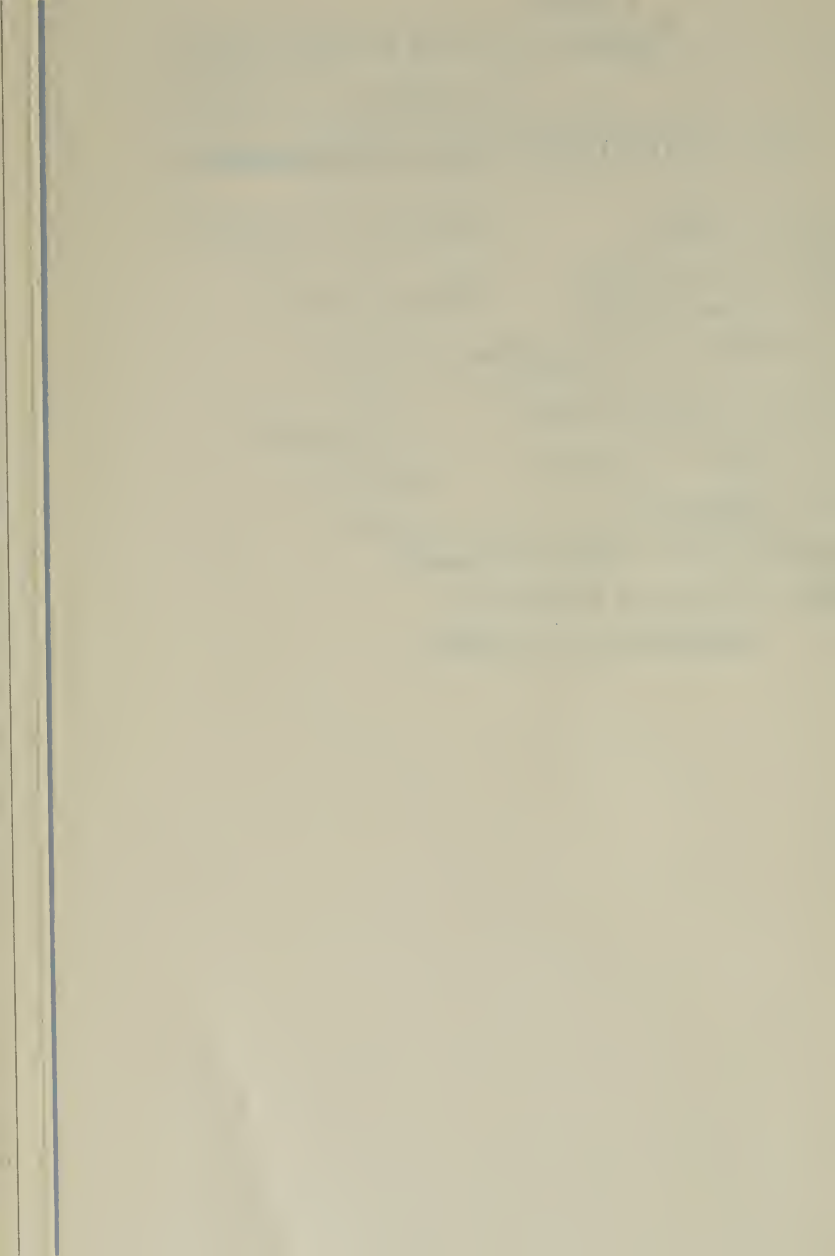
—cross

AND ADDRESSES OF ATTORNEYS

AND SING,
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San Francisco, Calif.,
Attorneys for Appellant.

JOSEPH TRAMUTOLO,
Assistant United States Attorney,

R. BONSALL,
Assistant United States Attorney,
San Francisco, California,
Attorneys for Appellee.



Southern Division of the United States
District Court, in and for the Northern Dis-
trict of California, Second Division

No. 29118-R

WING FOO,

Plaintiff,

vs.

HAROLD McGRATH, Attorney General of the
United States of America,

Defendant.

COMPLAINT FOR DECLARATORY
RELIEF TO ESTABLISH CITIZENSHIP

Plaintiff, Wong Wing Foo, and his attorneys,
Sing, complain of the defendant as follows:

I.

Plaintiff is a resident of the County of San
Francisco, City of Lodi, State of California, wherein
he maintains his lawful domicile with his father,
Wong Sing, et al.

II.

The defendant is the duly appointed and
authorized Attorney General of the United States,
and such is the head of the Immigration and
Naturalization Department of the United States,
as named herein in his official capacity as such.

III.

That the jurisdiction of this Court is because plaintiff has a cause of action against defendant pursuant to the provisions of Section 101 of the Nationality Act of 1940, as amended pursuant to Title 8, Section 903, United States Code Annotated.

IV.

That plaintiff is a citizen of the United States.

V.

That plaintiff was born on June 22, 1918, in Cheung Sing Village, Toyshan District, Kwangtung Province, China; that plaintiff's lawful blood relationship is Wong Yem, and that his lawful blood relationship is Lim Shee, lawful wife of the said Wong Yem; that the said Wong Yem is a citizen of the United States and was a citizen of the United States at the time of plaintiff's birth in China; that the said Wong Yem had resided in the United States at the time of plaintiff's birth; that at birth, plaintiff was a citizen of the United States by reason of the fact that the United States then in full force and effect, to wit, Section 1993, United States Revised Statutes, as amended (Act of February 10, 1888), provided that the said Lim Shee is a native and citizen of the Republic of China.

VI.

That the plaintiff departed from China and came to the United States to join his said father and the

d arrived at the port of San Francisco,
, on November 26, 1948, via the Philip-
Lines, seeking admission to the United
a citizen thereof.

VII.

e plaintiff was detained by the Immigra-
Naturalization Service, Department of
said port, and restrained of his liberty
e United States; that a Board of Special
omposed of officers and employees of the
on and Naturalization Service of the
nt of Justice denied that plaintiff is the
od son of the said Wong Yem and is a
the United States, and ordered plaintiff's
from the United States to China as an
a citizen of China.

VIII.

e plaintiff took an appeal from said de-
the Commissioner of Immigration and
tion Service and to the Board of Immi-
ppeals, Department of Justice, who and
under the direction of, and are solely
e to, the defendant, as Attorney General
ited States; said Commissioner and said
Immigration Appeals affirmed the said
decision of the Board of Special Inquiry
rancisco, California, and dismissed the
appeal.

States on bond, pending the final disposition of the appeal for admission to the United States as a citizen in the penal sum of \$1,000.00 required by plaintiff by said Immigration and Naturalization Service, prior to plaintiff's temporary release from custody.

X.

That because of all the said decisions and orders of the officers of the Department of Justice, plaintiff has been denied his right and privilege to enter and remain in the United States as a citizen thereof, the plaintiff, having been denied by the Attorney General of the United States, who is the head of the Department of Justice of the United States, the right to enter and reside permanently in the United States as a citizen thereof, now brings this complaint and prays as follows:

(1) That a judgment be entered declaring that plaintiff, Wong Wing Foo, is a citizen of the United States.

(2) That the defendant be directed to release the plaintiff from the custody or control of the Immigration and Naturalization Service.

(3) That the defendant cancel and set aside the order for plaintiff's deportation to China and exonerate said appearance and departure.

(4) For such other and further relief as the Court may seem just and proper and the law and the case may require.

ates of America,

alifornia,

County of San Francisco—ss.

Wing Foo, being first duly sworn, deposes
as follows:

is the plaintiff named in the foregoing
that the same has been read and ex-
him and he knows the contents thereof;
ame is true of his own knowledge except
e matters which are therein stated on his
n and belief, and as to those matters he
to be true.

/s/ WONG WING FOO.

ed and sworn to before me this 8th day
ber, 1949.

/s/ ALBERT K. CHOW,

ublic in and for the City and County of
Francisco, State of California.

mission expires March 26, 1951.

ed]: Filed September 8, 1949.

District Court and Cause.]

MOTION FOR DISMISSAL

ow the defendant herein, J. Howard Mc-
Attorney General of the United States,
g an appearance in the nature of a special

In District of California, and Legal I
Assistant United States Attorney for the
District of California, moves the Court to
the complaint in the above-entitled action
following reasons:

(1) That the complaint fails to show
action against the defendant in this jurisd
the reason that it fails to show that plain
ever a permanent resident of the Northern
of California and within the jurisdiction
Court.

(2) That under Section 503 of the N
Act of 1940 (54 Stat. 1171, 1172; Title 8,
903) this Court is without jurisdiction of
ject matter of this suit for the reason
complaint fails to show that plaintiff claim
manent residence at any place in the Unit
or within the Northern District of Calif
within the jurisdiction of this Court, as
by Section 503 of the Nationality Act of

This motion will be based on the prov
Section 503 of the Nationality Act of
U.S.C.A. 903), which provides that an
this nature must be brought in the Distr
of the United States for the District of C
or in the District Court of the United S
the district in which such person claims p
residence; also on plaintiff's complaint no
with the Court and the affidavit of Lloyd I
Assistant District Adjudications Officer o

nited States Immigration and Naturaliza-
rice at San Francisco, California, show that
tiff, Wong Wing Foo, is not now a perma-
nent of the United States, and further that
tiff, Wong Wing Foo, in truth and fact
r crossed the Immigration barrier and in
ation of law has never been legally ad-
o the United States for permanent resi-

/s/ FRANK J. HENNESSY,
United States Attorney,

/s/ EDGAR R. BONSALE,
Assistant U. S. Attorney,
Attorneys for Defendant.

ressed]: Filed October 19, 1949.

District Court and Cause.]

AFFIDAVIT

E. Gowen, being first duly sworn, on oath
and says:

e is Assistant District Adjudications Offi-
migration and Naturalization Service, Port
rancisco; that in connection with his official
such he is joint custodian of the files of
migration and Naturalization Service at
of San Francisco, California; that he is
with the contents of the file of the Immig-

foo, bearing number 1300-85974; that the said Wong Wing Foo shows that he entered the Port of San Francisco, California, on November 26, 1948, aboard the Philippine Air Line and applied for admission to the United States; that Wong Wing Foo was temporarily detained by the Immigrant Inspector aboard the Philippine Air Lines plane upon his arrival; that he was thereafter held for examination by the Board of Special Inquiry; that the Board determined he was an alien and not a citizen of the United States; that on December 16, 1948, Wong Wing Foo was refused admission to the United States by the Board of Special Inquiry on the ground that he was an immigrant alien not in possession of an immigration visa as required by Section 213 of the Immigration Act of May 26, 1924 (54 Stat. 213) and under executive Order 8766, and was not in possession of a passport; that pending the disposal of his case by the Immigration and Naturalization Service the subject was released from custody upon the giving of an appearance bond in the sum of \$1,000 on December 13, 1948; that the subject's appeal from excluding decision of the Board of Special Inquiry was dismissed by the Commissioner of the Immigration and Naturalization Service, at Washington, D. C., on February 1, 1949; that his further appeal was dismissed by the Attorney General's Board of Immigration and

r temporary or permanent residence or for
r purpose whatsoever.

er deponent saith not.

/s/ LLOYD E. GOWEN.

cribed and sworn to before me this 19th day
er, 1949.

/s/ EDWARD C. EVENSEN,

Clerk, U. S. District Court, Northern Dis-
of California.

ersed]: Filed October 19, 1949.

District Court and Cause.]

MR DENYING MOTION TO DISMISS

action filed in this Court on September 8,
intiff seeks to avail himself of the declara-
ef accorded by Section 503 of the National-
of 1940 (54 Stat. 1171, 8 U.S.C. 903), to
his claimed United States citizenship.
503 permits any person, within the United
e abroad, who is denied the right of a na-
f the United States by any government
r department on the ground that he is not
al, to institute an action for a judgment
g him to be a national. The action may be
either in the District Court for the District
mbia or in the District Court of the district

plaintiff's father, Wong Yem, is now a citizen of the United States at the time of plaintiff's birth in China on June 22, 1928. On October 26, 1948, plaintiff, for the first time, applied to the United States to join his father, who resides in Lodi, Northern District of California. Upon his arrival, he was detained by the Immigration and Naturalization Service, and, after being interviewed by a Board of Special Inquiry, was denied admission, on December 16, 1948, on the ground that he had failed to prove that he is the son of Wong Yem. The Commissioner of Immigration and Naturalization affirmed the action on January 24, 1949, as did the Board of Immigration Appeals on July 20, 1949. Pending the outcome of the administrative proceedings, plaintiff had been released on bond on December 13, 1948. Since that time he has resided with his father at Lodi, California.

Defendant has moved to dismiss on two grounds: (1) that the plaintiff cannot in good faith establish permanent residence within the jurisdiction of this Court; (2) that Section 503 was intended to apply only to persons who at one time had permanently resided in the United States and who encountered difficulties in returning after a temporary absence abroad because of the more stringent provisions of the expatriation sections of the Nationality Act of 1940.

In an opinion in the case of Look Yur Yung v. Acheson, #28984, filed today, Judge Erskine

g an action under Section 503, and in this
en though he now lives and always has
oad. The plaintiff here is in an even
osition inasmuch as he has been residing
strict for more than a year.

tion to dismiss is denied.

December 15, 1949.

/s/ LOUIS GOODMAN,
United States District Judge.

sed]: Filed December 16, 1949.

District Court and Cause.]

ANSWER TO COMPLAINT

now Howard J. McGrath, as Attorney
of the United States, Defendant in the
ion, by and through his attorneys, Frank
ssy, United States Attorney, and Edgar
ll, Assistant United States Attorney, and
e to Plaintiff's complaint admits, denies
es as follows:

I.

ing Paragraph I of the complaint, De-
denies that Plaintiff is a resident of the
f San Joaquin, City of Lodi, State of
a, and affirmatively states that Plaintiff is
and never has been a resident within the

maintains a lawful domicile with his father, Wong Yem, and affirmatively asserts that Plaintiff has no lawful domicile in the State of California or elsewhere in the United States and that Wong Yem is not the father of Plaintiff.

II.

Admits the allegations contained in Paragraph II of the Complaint.

III.

Answering Paragraph III of the Complaint, the Defendant denies the allegations contained in Paragraph III of the Complaint and affirmatively asserts that Plaintiff does not have a cause of action against the Defendant pursuant to the provisions of Section 503 of the Nationality Act, as amended and/or pursuant to Section 903 of the California Code annotated.

IV.

Answering Paragraph IV of the Complaint, the Defendant denies that Plaintiff is a citizen or national of the United States and affirmatively alleges that Plaintiff is a citizen and national of China.

V.

Answering Paragraph V of the Complaint, the Defendant denies the allegations contained in Paragraph V of the Complaint that Plaintiff was born on June 22, 1928, at Cheung Sing Village, District, Kwangtung Province, China; de-

he said Wong Yem; admits that Wong
citizen of the United States and was a
the United States on June 22, 1928; ad-
Wong Yem resided in the United States
June 22, 1928; denies that at birth Plain-
a citizen and/or a national of the United
reason of Section 1993, United States
Statutes, or in any other manner whatso-
affirmatively states that Plaintiff is not
never has been a citizen and/or a national
United States; admits that Lim Shee is a
d citizen of the Republic of China.

VI.

ant admits that the Plaintiff departed
na for the United States for the purpose
g his alleged father. Defendant has no
e as to Plaintiff's allegation that he in-
hereafter to reside in the United States
full advantage of the rights and privileges
l States citizenship and likewise to per-
duties as a citizen and/or national of the
ates and for that reason denies such alle-
admits that Plaintiff arrived at the Port
rancisco, California, on November 26, 1948,
ppine Air Lines, seeking admission to the
ates as a citizen thereof.

VII.

the allegations contained in Paragraph

VIII.

Admits the allegations contained in Paragraph VIII of the Complaint.

IX.

Denies that the Plaintiff was ever admitted to the United States on bond or otherwise, but affirmatively alleges that Plaintiff was temporarily released from the custody of the Immigration and Naturalization Service on December 13, 1951, upon the filing of a bond in the sum of \$1,000 and that Plaintiff should be returned to custody of the Immigration and Naturalization Service should his appeal from the excluding decision be dismissed.

X.

Admits that the Plaintiff has been denied the right and privilege to enter or remain in the United States as a citizen and/or national of the United States, and affirmatively alleges that the Plaintiff has no right or privilege to enter or remain in the United States, and that Plaintiff is not a citizen and/or national of the United States.

Wherefore, Defendant prays that the Complaint herein be dismissed: that the relief prayed for be denied, and that Defendant recover from Plaintiff his proper costs herein.

/s/ FRANK J. HENNESSY

United States Attorney

/s/ EDGAR R. BONSALE

Assistant U. S. Attorney

AMENDED ANSWER

now Howard J. McGrath, as Attorney of the United States, Defendant in the action, by and through his attorneys, Frank J. [unclear], United States Attorney, and Edgar R. [unclear], Assistant United States Attorney, and in answer to Plaintiff's complaint, admits, denies and denies as follows:

I.

In Paragraph I of the complaint, Defendant denies that Plaintiff is a resident of the County of San Joaquin, City of Lodi, State of California, and affirmatively states that Plaintiff is not and never has been a resident within the County of San Joaquin, California, or elsewhere in the United States. Defendant further denies that Plaintiff has a lawful domicile with his putative father, Wong Yem, and affirmatively asserts that Plaintiff has no lawful domicile in the State of California or elsewhere in the United States, and that Wong Yem is not the father of Plaintiff.

II.

In the allegations contained in Paragraph II of the complaint.

III.

In Paragraph III of the Complaint, Defendant denies the allegations contained in Paragraph

against the Defendant pursuant to the provisions of Section 503 of the Nationality Act as amended and/or pursuant to Section 903 of the Code of Federal Regulations as amended, as stated and set forth herein. The Defendant is not entitled to the benefits of the provisions of the Nationality Act as amended and/or pursuant to Section 903 of the Code of Federal Regulations as amended, as stated and set forth herein.

IV.

Answering Paragraph IV of the Complaint, the Defendant denies that Plaintiff is a citizen and/or national of the United States, and affirmatively alleges that Plaintiff is a citizen and national of the People's Republic of China.

V.

Answering Paragraph V of the Complaint, the Defendant denies the allegations contained in Paragraph V of the Complaint that Plaintiff was born in the United States on June 22, 1928, at Cheung Sing Village, District, Kwangtung Province, China; denies that Plaintiff's lawful blood father is Wong Yem; admits that Plaintiff's lawful blood mother is Lim Shee; admits that Wong Yem is a citizen of the United States and that Plaintiff is a citizen of the United States on June 22, 1928; admits that Wong Yem resided in the United States prior to June 22, 1928; denies that at birth Plaintiff was a citizen and/or national of the United States by reason of Section 1993, United States Code, Revised Statutes, or in any other manner whatsoever, and affirmatively states that Plaintiff is now and never has been a citizen and/or national of the United States; admits that Lim Shee is a native and citizen of the Republic of China.

VI.

Defendant admits that the Plaintiff departed the Philippines for the United States for the purpose of joining his alleged father. Defendant has no objection as to Plaintiff's allegation that he intended thereafter to reside in the United States to take full advantage of the rights and privileges afforded by United States citizenship and likewise to perform his duties as a citizen and/or national of the United States and for that reason denies such allegations. Defendant admits that Plaintiff arrived at the port of San Francisco, California, on November 26, 1948, via Philippine Air Lines, seeking admission to the United States as a citizen thereof.

VII.

Defendant denies the allegations contained in Paragraph 7 of the Complaint.

VIII.

Defendant denies the allegations contained in Paragraph 8 of the Complaint.

IX.

Defendant admits that the Plaintiff was ever admitted to the United States on bond or otherwise, but affirms and alleges that Plaintiff was temporarily removed from the custody of the Immigration and Naturalization Service on December 13, 1948, upon posting of a bond in the sum of \$1,000 conditioned upon the return to custody of the Immigration and Naturalization Service should his appeal from the

X.

Admits that the Plaintiff has been denied the right and privilege to enter or remain in the United States as a citizen and/or national of the United States, and affirmatively alleges that the Defendant has no right or privilege to enter or remain in the United States, and that Plaintiff is not a citizen and/or national of the United States.

XI.

As a further and affirmative answer to the complaint the Defendant admits that the Plaintiff at the time of his arrival at the port of San Francisco, California, on November 26, 1948, via a Pan American Air Line plane, made application for admission to the United States as a citizen of the United States and presented his claim before a duly appointed and qualified Board of Special Inquiry under Section 17 of the Immigration Act of February 6, 1917 (8 U.S.C. 153); that Plaintiff was excluded from entering the United States by the Board of Special Inquiry on December 9, 1948, as an alien immigrant not in possession of the required documents; that said excluding decision was affirmed by the duly appointed representative of the Attorney General of the United States; that the decision of the Board of Special Inquiry is final under Section 17 of the Immigration Act of 1917 (8 U.S.C. 153). Therefore the Plaintiff is entitled to the Board of Special Inquiry in this case.

dismissed; that the relief prayed for be
and that Defendant recover from Plaintiff
costs herein.

/s/ FRANK J. HENNESSY,
United States Attorney.

/s/ EDGAR R. BONSALL,
Assistant U. S. Attorney.

ed]: Filed March 14, 1951.

WONG WING FOO,

Plaintiff

vs.

J. HOWARD McGRATH, Attorney General,
United States,

Defendant

CHOW AND SING,
550 Montgomery Street,
San Francisco, California,
Attorneys for Plaintiff.

FRANK J. HENNESSY,
United States Attorney,

EDGAR R. BONSALL,
Assistant United States Attorney,
Post Office Building,
San Francisco 1, California,
Attorneys for Defendant.

OPINION

Murphy, District Judge.

This is an action brought under Section 102 of the Nationality Act of 1940 (54 Stat. 1171-1172, 903), for the purpose of establishing the citizenship and nationality of the plaintiff.

plaintiff, Wong Wing Foo, was born in June 22, 1928. He first arrived in the States at San Francisco, California, on June 26, 1948, at which time he applied for admission under the provisions of 8 U.S.C.A.—(Section 1993, U.S.R.S.), as the foreign-born son of one Wong Yem, an American citizen. A Board of Special Inquiry was convened at the San Francisco office and after six days of hearings it concluded that the plaintiff was not the son of Wong Yem. The Commissioner of Immigration and the Board of Immigration Appeals affirmed this decision and the plaintiff was ordered excluded from the United States. Pending the hearing of this suit which was a judicial declaration of his citizenship, defendant has resided, under bond, with his alleged father at Lodi, California.

At the trial no documentary evidence of the purported relationship was introduced. Plaintiff and defendant testified that they were father and son, that they had not seen each other since the plaintiff was ten years old, and that with the exception of two letters written in 1945 and 1947 that there was no contact between them for a period of ten years. No letters were produced in connection with this correspondence.

Defendant contented himself with introducing evidence at the Immigration hearings. They con-

They are replete with contradictions and inconsistencies.

At one point the alleged uncle told of his contact with this nephew in China during 1946 and 1947. Plaintiff corroborated and enlarged on this testimony. Wong Gong then was shown a picture of plaintiff. He not only could not identify the subject, but later withdrew all his former testimony, claiming he had never seen Wong Wing Foo, and admitted other vital details of plaintiff's testimony were untrue.

Another material contradiction appeared in plaintiff's testimony regarding the name of the plaintiff's mother. Plaintiff said it was "Lim Sun Sun" and the alleged father, however, stated that it was "Ling Heung." When plaintiff's attention was directed to this variance he testified that he didn't know her name, but having seen the characters for "Sun Sun" written in a book in his house he had assumed they were his mother's name.

Discussion

It is plaintiff's contention that he has established a prima facie case of citizenship in that he was born in the United States and Wong Yem testified to the purported father-son relationship and defendant introduced no evidence in contravention thereof than the testimony taken before the Immigration Board.

As stated in *Siu Say v. Nagle*, 295 F. 61 (9th Cir. 1932):

"In cases of this character experi-

is therefore had to collateral facts for cor-
ration or the reverse.”

Collateral facts in this instance are to be
the transcripts introduced by the de-

ted above, they contain conflicting and
contradictory statements as to such facts
er the alleged uncle, Wong Gong, had
plaintiff in China on numerous occasions
1946 and 1947; whether Wong Gong knows
on who purports to be his nephew, and the
plaintiff's alleged mother. Discrepancies
particulars are not the kind that arise from
of the human mind. Testimony of the
uncle was vital in that he was the only
presented by the plaintiff who could estab-
k of identity between the adult now seek-
sion and the six-year-old boy that Wong
reports to have left in China. His refusal
fy Wong Wing Foo and his denial of
s testimony was given great weight by the
tion Department. Plaintiff knew this. He
avoid seeing the shadow it threw over his
et, significantly, he made no effort to bring
ong before this tribunal. He charges in his
t Wong Gong lied—yet he was careful not
ne lie to him before this court. Such an
hardly accords with plaintiff's present
ions of forthrightness.

plaintiff attempts to explain away his in-

suggests that it is highly improper for a married woman to be known by her name this the Commissioner of Immigration, v case was before him on appeal, stated:

“(W)e believe that the applicant alleged father should have been able on the name of the applicant’s mother are in truth, father and son. Certainly the applicant did not know his mother there is no reason for inventing one unless for the purpose of attempting t a fraudulent case.”

The examples fixed on above are but ill of the discrepancies and contradictions wi the testimony abounds.

Although, as a practical matter, it would the decision in this case, defendant’s su that when a person in plaintiff’s position b action under Section 503 “he is entitle greater review (of the administrative acti on habeas corpus,” is deserving of comme is the same contention that was befor Holtzoff in *Mah Ying Og v. Clark*, 81 I 696, D.C. Dist. Col., and Judge Hall in *G Tung v. Clark*, 83 F. Supp. 482, D.C. Cal. these jurists held that to give such a con to this section would be practically to nulli stated by Judge Holtzoff, Section 503 “cont a trial de novo of the issue of citizenship

ering and wanting people a birthright of States citizenship is beyond value. And, the claim itself should be minutely scrutinized. This section plainly assumes that no claimant turned away without first being accorded judicial safeguard afforded by our democratic system.

Plaintiff has had the opportunity, in this action, to protect his patrimony. Upon him was the burden of establishing it by a preponderance of evidence. *Delaney*, 72 F. Supp. 312, affirmed 170 F.2d 9; *Bauer v. Clark*, 161 F. 2d 397, certiorari denied 338 U.S. Ct. 210, 332 U.S. 839; rehearing denied 338 U.S. Ct. 342, 332 U.S. 849). This he has failed

to do for the defendant.

The findings of fact and conclusions of law will be made in accordance with the rule.

Date: April 3, 1951.

Witness my hand and seal: Filed April 3, 1951.

District Court and Cause.]

STATEMENTS OF FACT AND CONCLUSIONS OF LAW

In the above-entitled cause, initiated pursuant to the provisions of the Act of October 14, 1940, C. 876, Title I, Sub-

on the 15th day of March, 1951, at 10:00
fore the Honorable Edward P. Murphy, t
presiding, sitting without a jury; plaintiff
ing by his attorneys, Jack W. Chow and
Sing, and the defendants by their attorney
J. Hennessy, United States Attorney for th
ern District of California, and Edgar R.
Assistant United States Attorney for said
and the evidence having been received,
Court having fully considered the same
make the following Findings of Fact a
clusions of Law:

I.

That the plaintiff, Wong Wing Foo,
in China on June 22, 1928.

II.

That the plaintiff first arrived in th
States at San Francisco, California, on M
26, 1948, at which time he applied for a
under the provisions of 8 U.S.C.A.—601(
tion 1993 U.S.R.S.) as a citizen of th
States, to wit: As the foreign-born son
Yem, an American citizen.

III.

That thereupon plaintiff was accorded a
by a Board of Special Inquiry at San F
California, following which hearing said
December 9, 1948, found that plaintiff wa

IV.

plaintiff thereon appealed from the decision of the Board of Special Inquiry to the Commissioner of Immigration who, on February 24, 1948, affirmed the excluding decision of said Board of Special Inquiry.

V.

Thereupon the said plaintiff appealed from the decision of the Commissioner of Immigration to the Board of Immigration Appeals who, on July 1, 1948, dismissed the appeal of the plaintiff and the plaintiff excluded from the United States.

VI.

On December 13, 1948, plaintiff was temporarily released under bond by defendant and since that time plaintiff has been residing at Lodi, California.

VII.

On March 15, 1951, plaintiff and Wong Yem were tried before this Court of the above-entitled case.

VIII.

This Court, having fully considered all the evidence submitted at the trial of the above-entitled case, finds that plaintiff is not the son of Wong

Conclusions of Law

I.

Title I, Subchapter V, Section 503, 54 S
also known as Title 8 U.S.C.A., Section 9

II.

That plaintiff is not a national or citizen of the United States.

It Is Hereby Ordered that judgment be entered denying said Petition for Declaration of Nationality and that the defendant is entitled to a writ of habeas corpus against plaintiff for his proper costs.

/s/ EDWARD P. MURPHY
United States District Judge

Approved as to form.

/s/ WILLIAM J. CHOW,
Attorney for Plaintiff

Receipt of Copy acknowledged.

[Endorsed]: Filed April 18, 1951.

No. 29118-R

VING FOO,

Plaintiff,

vs.

ARD McGRATH, Attorney General of
United States,

Defendant.

FINAL DECREE

above-entitled cause, having come on for
the 15th day of March, 1951, at 10:00
a. m., before the Honorable Edward P.
the Judge presiding, Jack W. Chow and
Sing appearing as attorneys for the plain-
named, and Frank J. Hennessy, United
attorney for the Northern District of Cali-
and Edgar R. Bonsall, Assistant United
attorney, appearing as attorneys for the de-
above named, and the evidence having been
and the Court having heard oral argument
ounsel for the respective parties and having
Findings of Fact and Conclusions of Law:
Therefore, by reason of the law and facts, it
is, Adjudged and Decreed by the Court as

That the Court finds in favor of the defendant and against the plaintiff, and specifically

(1) That the plaintiff is not the son of Yem.

(2) That by reason of the foregoing, the plaintiff is not a national or citizen of the United States.

II.

That the defendant recover his proper damages in this action. Judgment will be entered accordingly.

Dated: April 18th, 1951.

/s/ EDWARD P. MURPHY

United States District Court

Approved as to Form:

Dated: April 6, 1951.

/s/ WM. J. CHOW,

CHOW & SING,

Attorneys for Plaintiff

Lodged April 9, 1951.

[Endorsed]: Filed April 18, 1951.

Entered in Civil Docket April 19, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that this 4th day of May, 1951,

judgment of this court entered on the 18th April, 1951, in favor of defendant against plaintiff.

CHOW & SING,

By /s/ WM. J. CHOW,

Attorneys for Plaintiff.

resd]: Filed June 4, 1951.

District Court and Cause.]

COST BOND ON APPEAL

as, Wong Wing Foo, Plaintiff herein, has filed or is about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment made and entered on the 18th, 1951, by the District Court of the United States for the Northern District of California, Southern Division.

Therefore, in consideration of the premises, Fidelity and Deposit Company of Maryland, a corporation duly organized and existing under the laws of the State of Maryland and authorized and licensed by the laws of the State of California to do a general surety business in the State of California, does hereby undertake to provide bond on the part of J. Howard McGrath,

General, Defendant, that they will prosecute the appeal to effect and answer all costs if

(\\$250.00) Dollars, to which amount said
and Deposit Company of Maryland acknow
self justly bound.

And further, it is expressly underst
agreed that in case of a breach of any con
the above obligation, the Court in the abov
matter may, upon notice to the Fidelity and
Company of Maryland, of not less than
days, proceed summarily in the action o
which the same was given to ascertain th
which said Surety is bound to pay on ac
such breach, and render judgment therefo
it and award execution therefor.

Signed, sealed and dated this 4th day
1951.

FIDELITY AND DEP
COMPANY OF MAR

[Seal] By /s/ E. DELVENTHAL,
Attorney-in-Fact.

Attest:

/s/ S. CLIMO,
Agent.

The premium charged for this bond is \$
annum.

State of California,
City and County of San Francisco—ss:

On this 4th day of June, A.D. 1951, be
Belle Jordan, a Notary Public in and for

oned and sworn, personally appeared
elventhal, Attorney-in-Fact, and S. Climo,
f the Fidelity and Deposit Company of
l, a corporation known to me to be the per-
executed the within instrument on behalf
orporation therein named and acknowledged
at such corporation executed the same, and
wn to me to be the persons whose names
cribed to the within instrument as the At-
-Fact and Agent respectively of said corpo-
nd they, and each of them, acknowledged
t they subscribed the name of said Fidelity
osit Company of Maryland thereto as prin-
their own names as Attorney-in-Fact and
spectively.

ness Whereof, I have hereunto set my hand
ed my official seal at my office in the City
ty of San Francisco the day and year first
ritten.

/s/ BELLE JORDAN,
Public in and for the City and County of
San Francisco, State of California.
Commission Expires Nov. 9, 1951.

essed]: Filed June 8, 1951.

In the District Court of the United States
Northern District of California, South
sion

Before: Hon. Edward P. Murphy,
Judge.

No. 29118

WONG WING FOO,

Plai

vs.

J. HOWARD McGRATH, Attorney General
the United States,

Defen

REPORTER'S TRANSCRIPT

Thursday, March 15, 1951

Appearances:

For the Plaintiff:

W. J. CHOW, ESQ.,
JACK W. SING, ESQ.

For the Government:

EDGAR R. BONSALE, ESQ.,
Assistant United States Attorney

The Clerk: Wong Wing Foo vs. McGrath
trial.

Mr. Bonsall: Ready. This case, Your Honor
wanted to see if certain admissions can be

Court probably knows, the plaintiff is a
and he doesn't speak English. Unless we
ify some of the issues, the testimony taken
n interpreter on cross-examination will be
gthy. However, certain statements have
n from the plaintiff and one of the wit-
o will be produced, he is putative father,
board of special inquiry, and if counsel
ulate that the testimony was taken before
of special inquiry in the case of the father
t might save time. Otherwise I will have
ch question and answer separately through
reter.

t state that the records of the board of
quiry is a record required to be kept by
rtment of Justice. It is kept pursuant to

ow: It is admitted just for the purpose
g that such a record exists, but not as
th of the facts so stated. I believe since
itutes a trial de novo, I believe we should
statements from the witnesses [2*] and
statements made and contained in the
ion files given by the witness could only
r impeachment purposes.

urt: In other words, you don't accept the
n, is that right?

ow: That is right.

urt: All right. Let me advise you right

I don't intend to make a screen out of

Mr. Chow: Your Honor please, we will
this, that such statements exist.

Mr. Bonsall: Do you admit to the true
statement, that it is a truthful statement?

Mr. Chow: No, because that is within
say rule.

Mr. Bonsall: I still think we are going
the testimony in before the board. It is a
ment record, duly certified.

The Court: We will meet that when
to it.

Mr. Bonsall: All right.

Mr. Chow: Shall I proceed?

The Court: Proceed.

Mr. Bonsall: I might state what our
will be. It is simply the fact that he is not
son of the father.

Mr. Chow: And we believe that is not
Your Honor. [3]

(Thereupon Robert Park was sworn
interpreter.)

WONG YEM

called as a witness on behalf of the plaintiff
first duly sworn, testified through the Interpreter
as follows:

The Clerk: Please state your name to the Court.
A. Wong Yem.

Direct Examination

y of Wong Yem.)

na.

en?

ese Republic, the second year.

o is your father?

nsall: We will stipulate he is a citizen,

or. This particular witness is a citizen of

States.

w: Thank you.

Mr. Chow): What is your father's

A. Sare Wong.

ere is he now? A. In China.

roximately how old is he?

ut seventy-three.

at is your mother's name?

n Sui.

he living? [4] A. Yes.

v old is she, approximately?

ut sixty-one.

ere do they live now?

China.

you married, Mr. Wong Yem?

o are you married to? A. Lim She.

ere is Lim She living now?

China.

ve you any brothers and sisters?

ave four brothers, no sisters.

at are the names of your brothers?

(Testimony of Wong Yem.)

Q. You say you have four brothers?
include yourself? A. Yes.

Q. Is Wong Dim married? A. Y

Q. Who is his wife? A. Lee She

Q. Is Wong Sang married? A.

Q. Who is his wife? [5] A. Ho

Q. Is Wong Gong married?

A. Wong Gong's wife Hom She.

Q. Then who is the wife of Wong Sin

A. Ng She.

Q. Can you tell me if Wong Gong
family outside of his wife?

A. He has a wife and children.

Q. Will you describe his children, please?

A. Two daughters and one son.

Q. Do you know how old they are?

A. One two years old, one a little over
and one a few months old.

Q. Where is Wong Gong? A. In

Q. Has Wong Sing any children.

A. I don't know whether he has or not.
back already.

Q. Has Wong Dim any children?

Q. What is his name and age?

A. About two and a half years of age

Q. Have you any children?

A. I have four.

Q. Who are they?

A. Wong Foo, Wong Gay, Wong Ho

ny of Wong Yem.)

ong Foo is here, and three boys in China.

here is Wong Gay? A. In China.

ong Hong? A. In China.

d Wong Keong? A. In China.

Wong Wing Foo married? A. Yes.

no is his wife? Who is he married to?

m She.

e your other sons married? A. No.

nce your first arrival in the United States

y times have you been to China?

rice, altogether.

en did you leave and when did you return

of the said trips?

e Republic, 16th year, I went to China.

Republic 18th year came back. Republic

I went.

nsall: I wonder if the Interpreter would

a in our calendar? I have some difficulty

Chinese years.

ow: May I have a calendar? [7]

inese Republic 23rd year, came back.

nsall: What year would that be?

ng: That is 1934.

y Mr. Chow): When did you say you

ried, Mr. Wong Yem?

inese Republic 16th year.

at was during the first trip to China?

s.

en was Wong Wing Foo born?

(Testimony of Wong Yem.)

Mr. Chow: Excuse me.

Q. (By Mr. Chow): Date of marriage

A. Chinese Republic 16th year.

Mr. Sing: That is 1927.

Mr. Bonsall: Do you have the month and

Mr. Sing: Month and day?

A. Seventh month, fourth day.

Mr. Sing: That would be August 1st, 19

Mr. Bonsall: Do you intend to cover the
absent facts?

Mr. Chow: No. I wanted to get the dates
purpose is to show he was in China at
when the child, the plaintiff, was born.

Q. (By Mr. Chow): When was Wong
Foo born? [8]

A. Chinese Republic 17th year, fifth mo
fifth day.

Mr. Sing: That would be June 22nd, 19

Mr. Bonsall: Correct, as to the date.

Q. (By Mr. Chow): In other words
Wing Foo was born during your first visit to

A. Yes.

Q. How old was Wong Wing Foo when
saw him in China?

A. About six years of age. About six
age.

Q. How long was your second visit to C

A. You mean the last time?

Q. Yes, fifth

ny of Wong Yem.)

onsall: Do you have the month there?

terpreter: Ninth month, 29th day.

ng: That would be November 8th, 1931.

By Mr. Chow): When did you return from

?

inese Republic the 23rd year, the sixth
ne third day.

ng: That would be July 14th, 1934.

By Mr. Chow): During the time you were

on these visits where were you living?

neung Sing Village.

that your native village? [9]

es.

uring your visits to China after your son

ing Foo was born you had occasion to see

e often? A. Yes.

ou were living in the same house with him?

es.

ow large was Cheung Sing Village?

out eleven homes, or eleven houses and a

here was your house located?

n the second row, the fifth house.

here are you living now, Mr. Wong?

odi.

hat is your occupation? A. Cook.

here is your son, Wong Wing Foo, living?

e lives at Stockton.

(Testimony of Wong Yem.)

English. I left him in Stockton to go to
where he has better situation to study.

Q. When Wong Wing Foo was admitted
bond——

Mr. Bonsall: Just a minute. I don't
has been admitted. He was released on bond
never crossed the Immigration Barrier. [10

Mr. Chow: That is right.

The Court: He was released in custody of
Immigration Service December 13th, 1941
filing of bond.

Q. (By Mr. Chow): Where was he living
mediately after his release?

A. He lived with me for some months.

Q. You say he is living in Stockton, California.
How far is Stockton from Lodi?

A. About 13 or 14 miles.

Q. How often do you see him, or does
you?

A. Any time, my day off, I go to see him.

Q. Has he been to visit you? A.

Q. How often? A. At least once

Q. Are you contributing to his support?

A. Yes.

Q. Is Wong Wing Foo working?

Q. What is he doing in Stockton?

A. Go to school.

Mr. Chow: That is all.

y of Wong Yem.)

a, was seen by you at the age of six, [11]
the next time you saw him?
haven't been to China since I saw him
as six.

you see your son in China or anywhere
e time he was six years old and the time
val here at the port of San Francisco?
except the date of the hearing.

Ving Foo married? A. Yes.

you know his wife's name?

n She.

ere is she? A. In China.

re you ever seen her since the time of the
arriage?

I haven't been to China.

urt: That is the plaintiff's wife, Mr.
ou refer to?

sall: The son's wife.

rt: That is what I mean, the plaintiff.

sall: Yes, the son's wife.

Mr. Bonsall): Does your son have any
your reputed son have any children?

mean my oldest son?

one that is seeking for declaratory judg-
tizenship? [12]

, he has a son.

at is his name? A. Wong Falk.

re you ever seen him? A. No.

(Testimony of Wong Yem.)

Q. Does he have any church or other showing the birth of the son in China?

Mr. Chow: I object to that. I believe been answered by the witness in his last

Mr. Bonsall: Rather ambiguous answer

The Court: He said there are no records in the village. Now he is asking if there is any record of any kind.

A. They have a school there, not a church school; they don't have any record.

Q. (By Mr. Bonsall): The Chinese records show the birth in China?

A. I believe not.

Q. You believe not? Have you received letters from your son at any time from China?

A. Yes.

Q. Do you have any of those letters?

A. No, nothing important. I didn't have any.

Q. Do you have any letters of any kind, important or not, received by you from your son?

A. No.

Mr. Chow: I object to this line of questioning. I don't see the relevancy as to the relations of the witness to the Honor.

The Court: Objection overruled.

Q. (By Mr. Bonsall): How much money, if any, did you send to China for the support of your son, Fong?

y of Wong Yem.)

I understand your testimony correctly
you only had one brother in the United

A. I have three brothers here.

three brothers here? One of them is Wong
what correct? A. Wong Din.

Wong Gong. Do you have a brother by the
Wong Gong? A. Yes.

one here in the United States?

Where does he live?

San Francisco.

What address in San Francisco?

Monoma Street. [14]

Do you have Wong Gong as a witness before
the Board of Inquiry convened here in San
in the case of Foo?

Now: I object to that. I don't see the
of that.

Court: The record of that would be the best
Objection sustained.

(By Mr. Bonsall): Do you have Mr. Gong
in court today?

Now: Also objected to.

Court: Overruled.

Wong Gong, you mean?

(By Mr. Bonsall): Wong Gong?

Was Wong Gong married? A. Yes.

What is his wife's name?

A. Same place, Sonoma Street.

Q. Is she in Court today?

A. No, she is not.

Q. When was Wong Gong married?

A. Summer of the Chinese Republic
36th year.

Q. What are the names of the other two
who are [15] living in the United States?

A. Wong Din and Wong Sing.

Q. Where does Wong Din live?

A. Lives in the city.

Q. What address does he live at?

A. He goes in and out of Jackson Street.

Q. Is he married? A. Yes.

Q. What is his wife's name? A.

Q. Is he here in Court? A. No.

Q. Where does Wong Sing live?

A. He lives somewhere in the country.

Q. Do you know any better address than
lives somewhere in the country?

A. Somewhere near San Diego. But he
see me a little while ago. He has got some
job there so he didn't give me any address.

Q. Did I understand he doesn't know
is at the present time? Is that correct?

Mr. Chow: I object to that. I think he
answered that question.

The Court: Not to my satisfaction. Over.

A. No, I don't know. I didn't under

y of Wong Yem.)

y Mr. Bonsall): And what is the name
ife? A. Lim Shi.

l you testify before the Board of Special
onvened in the case of Wong Wing Foo
an Francisco on December 6th, 7th and

A. Yes.

l this gentleman here in Court preside at
al Board of Inquiry hearing, Mr. Bert

A. Yes, both of them.

t particularly Mr. Norris was the presiding
hat correct?

s, the second time.

l you have Mr. Wong Gong as a witness
t Special Board of Inquiry?

e first time he was there, but he went—
e went there the second time I don't re-

l you talk with Mr. Wong Gong about the
given before the Board of Special In-

idn't tell him anything particular. I told
on came.

ll, did you talk with Mr. Wong Gong
ad testified before the Board of Special

ow: I don't see the relevancy.

urt: What is the purpose of that, whether
[17] to him after?

onsall: The purpose is to show what

(Testimony of Wong Yem.)
witness Wong Gong, who is not here at the
time.

Mr. Chow: I believe if you wish to go
you should have Wong Gong here. I don't know
whether he is using that for the purpose of
peaching the witness or not.

Mr. Bonsall: At this time—it is a little
order—at this time I will ask be marked for
fication a certified copy of the record of the
ment of Justice in connection with the Special
of Inquiry Hearing held on December 6th,
1948.

Mr. Chow: For what purpose?

Mr. Bonsall: For identification at this time.

The Court: Received and marked for iden-
tification.

(Record of hearing before a Board of
Special Inquiry was marked Government's
“A” for identification.)

Q. (By Mr. Bonsall): What is the name of
your wife?

The Court: He has already told you, Lin.

Mr. Bonsall: All right.

Q. (By Mr. Bonsall): I show you a
paper bearing Chinese characters—may I
passed to the witness, Your Honor?—and
if you have ever seen that before? A.

Q. Who put those characters on there? [

A. I wrote.

ny of Wong Yem.)

the time of the hearing? You mean the
before the Board of Special Inquiry, of

don't recall which time. There were three
ring.

and you sign this and offer this in evidence
e of the days of the three day hearing?

ow: I object to that question because I
eve it is clear. As I understand it, a thing
was not offered as evidence.

onsall: At the Board of Special Inquiry

ow: It was asked of him to write that
r name down.

onsall: I withdraw the question.

y Mr. Bonsall): You said you did sign
r with the Chinese characters, is that cor-

A. Yes, I wrote it.

here did you sign it?

the hearing.

whom did you deliver this paper?

the time of the hearing. I don't know who

and you hand it to Mr. Norris, the presiding
the hearing?

don't know to whom I gave it. I don't

9]

hat is the English equivalent of these char-

A. I didn't write the English

(Testimony of Wong Yem.)

A. It is my wife's name.

Q. And what is your wife's name in English?

A. Lim Shi, or also known as Lim Lee Joo.

Mr. Bonsall: I will ask it be received and marked for identification at this time.

The Court: It may be received and marked for identification.

(Slip of paper containing the name of the witness' wife in Chinese characters was received as Government's Exhibit "B" for identification.)

Q. (By Mr. Bonsall): Did you make a statement to have Wong Gong here today?

Mr. Chow: I object to that, your Honor.

The Court: Objection sustained.

Mr. Bonsall: I have here, your Honor, a Chinese and English translation of the testimony given by the witness before the Board of Special Inquiry. The witness doesn't speak English, apparently, I was asked to ask the Interpreter to interpret these questions from English to Chinese, and the answers from Chinese to English, and ask him if he made those questions and answers. Otherwise it will take quite some time to go into [20] each one of these questions and answers, and frankly our defense is largely based on conflicting testimony that was given in this case.

Mr. Chow: I object to that, Your Honor. If any statement ever statement is contained in there, if it is relevant and pertinent to the examination or cross-examination,

y of Wong Yem.)

urt: You mean the testimony of the man
different time?

ow: In an extra judicial hearing. It can
used for the purpose of impeachment, a
ther than this type. This constitutes a
ovo, and if he should bring in the pro-
r findings of the Court proceedings other
I believe it isn't admissible.

urt: That is one of the most peculiar
f a trial de novo that it has ever been
re to listen to.

ow: If I may ask, I don't understand
se of it. If he was using it for the purpose
ning the witness——

urt: In a trial de novo, if I am not very
error, the Court reviewed the testimony
previous hearing; and it also takes into
ion the testimony produced at this hear-
then arrives at its own conclusion based
testimony before the Special Board [21]
y, whatever it may be, and based on its
on and conclusions and the testimony ad-
the trial. That is the law, unless you show
ing to the contrary.

ow: In this particular action the sole
le basis is for determination of citizenship.

urt: I know that. Otherwise you wouldn't

(Testimony of Wong Yem.)

Mr. Chow: This is by Judge Holtzoff in
of Mah Ying Og vs. Clark:

“It is clear that the Statute contem-
trial de novo of the issue of citizenship
merely a review of the administrative

The Court: So far that isn't in conf
what I said.

Mr. Chow: “Consequently, the mere fac
matter was determined by an administrativ
and subsequently in a habeas corpus pr
does not bar this suit.”

The Court: Right again. Nor am I b
these proceedings as they are by the review

Mr. Chow: “The 1940 Statute, howe
templates a reopening and a full judicial
of the entire issue of citizenship without
it merely to [22] a review of the admin
action. In a habeas corpus proceeding, t
might feel that it would have reached a
conclusion than that reached by the admin
agency. Nevertheless, it would be constrain
firm the action of the administrative agency
were substantial evidence sustaining such a
an action for a declaratory judgment u
1940 Code, however, the Court determines
issues de novo.”

So that the only issue here is relationship

The Court: That is correct, but how an
to determine all the issues de novo unles

y of Wong Yem.)

urt: Put that in evidence.

nsall: I will offer in evidence at this time
nt's Exhibit 1 for identification, being a
copy of the official record in connection
board of Inquiry hearing held in December,
onnection with the hearing on application
e entry into the United States.

ow: For the purpose of shortening the
gs and expediting it, I will stipulate to the
given by the witnesses here, that is, given
tness Wong Wing Foo and the witness
e examined later, that is by [23] the wit-
g Yem and Wong Foo.

nsall: I will ask that the whole certified
nt record be introduced.

urt: If you don't ask for it, I will intro-
on my own motion.

nsall: Yes, your Honor, and I have asked

ow: I will stipulate to the testimony, your

urt: All right.

ow: Because there is testimony of other
the record.

urt: I am going to read it all.

hereupon certified copy of record of Im-
tion and Naturalization Service hereto-
marked Government's Exhibit "A" for

(Testimony of Wong Yem.)
son's son, Foo's son? Did you ever see M
son? A. No.

Q. You say at different times you sent money to China. Did you send any money to your
Mr. Foo? A. I sent it to my wife.

Q. Were you supporting your wife in C
A. Yes.

Q. How many times did you write to
in China?

A. Two or three times a year. Sometimes I sent to him at Hong Kong, and then I sent to
in China. [24]

Mr. Bonsall: I have no further cross-
tion with the record in evidence, your Honor.

Mr. Chow: That is all.

(Witness excused.)

WONG WING FOO

the plaintiff herein, being first duly sworn
through the Interpreter as follows:

Direct Examination

By Mr. Chow:

Q. Your name is Wong Wing Foo?

A. Yes.

Q. When were you born and where?

A. Chinese Republic, 17th year, fifth month

Q. Where were you born?

ny of Wong Wing Foo.)

n English): About a year.

terpreter: He speaks some.

hrough the Interpreter): About a year.

By Mr. Chow): Who are your parents?

e their names?

m She. Wong Yem.

here are they now? A. (Pointing).

ourt: Let the record show he is indicating

ss Wong Yem. [25]

By Mr. Chow): Where is your mother

A. In China.

re you married? A. Yes.

ho is your wife? A. Hom Toy Ping.

ave you any children? A. One son.

ho is he and how old? A. In China.

hat is his name and how old is he?

ong Falk. About three or four years of age.

ho are your grandparents, your paternal

ents? A. Wong Shar Loon.

he the father of your father?

es.

hat is the name of your paternal grand-

A. Hom Shi.

here are they now? A. In China.

here do they live in China?

eung Sing Village.

as your father any brothers and sisters?

e has four brothers and no sister.

y mean four brothers including

(Testimony of Wong Wing Foo.)
Q. Who are they and where are they living?
A. Wong Din. That is the elder brother.
Gong, the third brother. The fourth brother
Sing.

Q. Where are they living now?

A. They all live in San Francisco. Wong
lived in the country, small town somewhere.

Q. Have you ever seen any one of them?

A. Yes.

Q. Is Wong Gong married? A. Yes.

Q. Who is his wife and has he any children?

A. Hom Shi. Yes, two daughters and one son.

Q. Is Wong Sing married? A. Yes.

Q. Who is his wife and has he any children?

A. Ng Shi. Not when I arrived.

Q. Has Wong Ding—is Wong Ding married?

A. Yes.

Q. Has he any children? A. One.

Q. What is the size of your native village?

A. Not very large. Six small houses
large ones.

Q. And where is your house located in the
village?

A. On the second row, the fifth house. [

Q. Can you describe your house? Will you
describe your house?

A. Yes. There are two rooms and then there is
a partition with boards. Two kitchens.

Q. Where are you living now?

ny of Wong Wing Foo.)

ing to school.

re you working? A. No.

ow are you able to support yourself?

y father supports me.

ou mean your father Wong Yem?

es.

ow often do you see your father Wong

A. About once a week.

o you go to visit him or does he come to

?

c times I go to see him and other times

to see me.

ou said you were attending school in

? A. Yes.

hat school?

ey have a special class for Chinese.

ow: That is all. Mr. Bonsall? [28]

Cross-Examination

Bonsall:

hat is your mother's name?

m Shi.

hat is your mother's full name?

don't know. She is always known as Iim

show you this document with Chinese char-

d ask you if you have ever seen this before?

es. I don't understand the English part

(Testimony of Wong Wing Foo.)

Q. Where did you write it?

A. At the Immigration Service.

Q. In December, 1948, at the time of your hearing before the Board of Special Inquiry,

A. Somewhere around about that time.

Q. To whom did you deliver it or hand it over?

A. Some of the inspectors.

Q. Did you deliver it to this man known as Norris?

A. I can't recognize him. I wouldn't know him. I can't tell.

Q. What do those Chinese characters mean?

A. Lim Sun Sun.

Q. Where did you get that name from?

A. I found it in the books.

Q. Didn't you tell the officers at the Immigration Hearing this was the name of your mother?

A. Well, they asked me so, so persistent in asking me to get somebody's name, so I just wrote down something.

Q. Didn't they ask you for your mother's name at the time you wrote this name?

A. Well, they were so persistent about getting my mother's name, I told them Lim Shi, and the Chinese I just wrote down some name.

Q. Didn't you tell them at the Board of Special Inquiry Hearing at first you didn't know your mother's name?

A. Yes, I did.

y of Wong Wing Foo.)

now it is Lim Shi.

Sall: I will ask this document be marked
fication, your Honor—in evidence, rather.

rt: Received and marked.

heet of paper entitled “Name of alleged
mother” and containing Chinese charac-
was admitted into evidence as Govern-
s Exhibit C.)

Sall: I will ask this, marked heretofore
fication, be marked in evidence. That is
ent in Chinese in which the father gave
of his wife, and this document in which
res the name of his mother.

rt: So ordered.

document heretofore marked Government’s
it B for [30] identification was admitted
vidence.)

Mr. Bonsall): Do you know if Wong
fied before the Board of Special Inquiry
a your case?

w: I object to that.

rt: It is in the record, isn’t it?

Sall: It is, your Honor. I think, your
ch the record in evidence, no further cross-
on.

w: That is our case, your Honor. We
have proved a prima facie case. We have

The Court: All right, I will read the r

Mr. Chow: We will submit it entire records in evidence, your Honor.

The Court: Matter submitted.

Mr. Chow: At this time, your Honor, by Mr. Bonsall a couple of days ago he w Section 17 of the Immigration Act of 19 trolling in that the decision of the Board of Inquiry is final. We are objecting to tha wish to file authority for that.

The Court: What is it?

Mr. Chow: This is Mah Ying Og vs. decided on December 8th, 1950, and has reported yet. I have here a brief filed by th ment. The Government was appellee in th They pose this question, if I may read [31]

“In the opinion of defendant-app question presented is: ‘Does Section Immigration Act of 1917, making th of a Board of Special Inquiry on ex an alien final, apply to action broug Section 503 of the Nationality Act o declare an appellant a citizen where was born in China of a parent who be a native born citizen?’ ”

That question has been answered in the Although I haven't the decision, I have he ping from the Washington Post, I believ a story about that which states that the

r words, Section 17 does not control Section of the Nationality Act. I also wish to that Section 904 of Title 8 also permits 03 of Title 8 to be filed by a person who zenship.

nsall: If the Court please, in this case I n the liberty of preparing a memorandum tention to certain of the testimony at the Special Inquiry hearing and the facts in s disclosed upon the testimony this morn- covering in substance what I believe to be f the case. I ask leave to file this memo- and will furnish counsel with one. [32]

ow: I object to that.

urt: On what grounds?

ow: I will withdraw that; I am sorry.

urt: Do you want to file one?

ow: No, except that he is introducing the of Wong Gong, who was a witness at the eeding. He is introducing his testimony. in order to have his testimony before the should produce the witness.

urt: Why didn't you produce him?

ow: In the first place, I have asked the hether he is available and he is working y, and——

urt: You have the process of the Court to you.

ow: I don't want to subject him to loss

your Honor

I, Official Reporter and Official Reporter certify that the foregoing transcript of a true and correct transcript of the matter contained as reported by me and thereafter to typewriting, to the best of my ability.

/s/ KENNETH J. PECK.

[Endorsed]: Filed June 19, 1951. [33

[Title of District Court and Cause.]

CERTIFICATE OF CLERK
TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of Ohio, do hereby certify that the foregoing accompanying documents and exhibits, listed here, are the originals filed in this Court in the case entitled and that they constitute the appeal herein as designated by the attorney appellant:

Complaint for declaratory judgment.

Motion to dismiss.

Affidavit of Lloyd E. Gowen.

Order denying motion to dismiss.

Answer to complaint.

Amended answer to complaint.

ecree.

of appeal.

nd on appeal.

tion of record on appeal.

er's transcript, March 15, 1951.

ant's Exhibit A.

ant's Exhibit B.

ant's Exhibit C.

ness Whereof I have hereunto set my hand
d the seal of said District Court this 21st
ne, 1951.

C. W. CALBREATH,
Clerk.

By /s/ C. M. TAYLOR,
Deputy Clerk.

sed]: No. 12986. United States Court of
for the Ninth Circuit. Wong Wing Foo,
, vs. J. Howard McGrath, Attorney Gen-
e United States, Appellee. Transcript of
Appeal from the United States District
r the Northern District of California,
Division.
une 21, 1951.

/s/ PAUL P. O'BRIEN,
the United States Court of Appeals for
Ninth Circuit.

WONG WING FOO,

Plaintiff

vs.

J. HOWARD McGRATH, Attorney General

United States,

Defendant

STATEMENT OF POINTS

Plaintiff sets forth the following points he intends to rely on appeal:

1. The court erred in holding that plaintiff failed to sustain the burden of establishing relationship to his father, Wong Yem, by preponderance of evidence.

2. The court erred in admitting and considering the records and transcripts of the immigration proceedings other than the transcripts of testimony of the plaintiff and his father, Wong Yem, the admission of which was stipulated by the plaintiff.

CHOW AND SING,

By /s/ W. J. CHOW,

Attorneys for Appellant

Court of Appeals and Cause.]

ATION OF RECORD ON APPEAL

Now, the appellant by his attorneys, Chow
in the above-named matter, hereby desig-
entire record to be included in the tran-
record on appeal which is being considered
for the determination of the points on
tends to rely on appeal.

CHOW AND SING,

By /s/ W. J. CHOW,

Attorneys for Appellant.

of Copy acknowledged.

ed]: Filed June 29, 1951.

